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8 EBAY INC.

9 UNITED STATES DISTRICT COURT
10 CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

11 BARRY ROSEN,
12 Plaintiff,
13 v.
14 EBAY INC., and DOES 1 through 10,
15 Defendants.
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Case No. CV13-06801 MWF (Ex)

**DECLARATION OF CARA
BALDWIN IN SUPPORT OF
DEFENDANT EBAY'S MOTION
FOR SUMMARY JUDGMENT**

Honorable Michael W. Fitzgerald

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28 **DECLARATION OF CARA BALDWIN ISO MOTION
FOR SUMMARY JUDGMENT**

Case No. CV13-06801 MWF (Ex)

1 I, Cara Baldwin, declare as follows:

2 1. I have worked at eBay Inc. (“eBay”) since 2011, and am currently
3 Senior Legal Counsel on the Global Intellectual Property Team, a position I have
4 held since March 2014. On August 14, 2014, I was deposed by Plaintiff’s counsel
5 in connection with this litigation pursuant to Federal Rule of Civil Procedure
6 30(b)(6). I make the following declaration on personal knowledge except for those
7 statements made on information and belief, and as to those matters I believe them to
8 be true. If called upon to testify to the statements in this Declaration, I could and
9 would competently testify to those facts. I submit this declaration in support of
10 eBay’s Motion for Summary Judgment.

11 **eBay’s Policies Protecting Intellectual Property**

12 2. eBay’s Verified Rights Owner (“VeRO”) program allows intellectual
13 property owners to report listings that infringe their rights, including copyrights.
14 The VeRO Program is designed to fulfill – indeed, exceed – eBay’s legal
15 requirements in relation to listings of potentially infringing items. eBay has also
16 implemented significant other initiatives to supplement the VeRO Program and to
17 promote a safe and positive trading environment on its site.

18 3. At the most fundamental level, eBay has implemented policies
19 prohibiting the listing of items that infringe upon intellectual property rights or are
20 otherwise prohibited from being offered for sale on eBay. These policies, which
21 prohibit not just counterfeit items and items that infringe intellectual property rights
22 of third parties, but also, for instance, guns and illegal drugs, are posted on eBay’s
23 website and apply to all users, who must agree to abide by them as part of eBay’s
24 User Agreement. All sellers on eBay’s website create registered accounts and must
25 agree to be bound by the terms of eBay’s User Agreement, which includes explicit
26 provisions regarding the protection of intellectual property, before they may sell
27 items through the website. The current terms of eBay’s User Agreement are
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1 materially the same as they were during the time period relevant to the instant
2 litigation (August through September 2013).

3 4. Attached hereto as Exhibit A is as true and correct copy of eBay's
4 User Agreement, bearing Bates numbers EBAY0003150-58, which is available at
5 <http://pages.ebay.com/help/policies/user-agreement.html>.

6 5. eBay provides users with information about intellectual property,
7 instructing sellers that the unauthorized sale of copyrighted items is illegal as well
8 as against eBay policy, and that they are required to comply with applicable law
9 concerning uses of copyrighted material. eBay further provides sellers with
10 guidelines for creating non-infringing listings on eBay. This information is
11 provided on eBay's website, including on pages titled "Rules about intellectual
12 property – overview" and "Creating legally compliant listings."

13 6. Attached hereto as Exhibit B is a true and correct copy of eBay's
14 "Rules about intellectual property – overview" page, bearing Bates numbers
15 EBAY0000012-13, which is available at
16 <http://pages.ebay.com/help/policies/intellectual-property-ov.html>.

17 7. Attached hereto as Exhibit C is a true and correct copy of eBay's
18 "Creating legally compliant listings" page, bearing Bates numbers EBAY0000088-
19 90, which is available at <http://pages.ebay.com/help/sell/compliant-listings.html>.

20 8. eBay also encourages sellers to contact intellectual property rights
21 owners if they are unsure whether an item is a replica, counterfeit, or other
22 unauthorized copy. These instructions are provided on eBay's website at eBay's
23 "Creating legally compliant listings" page. See Exhibit C.

24 9. eBay takes action against users who violate eBay's User Agreement
25 and eBay's policies. Such actions may include taking down listings or a range of
26 other actions, including limiting buying and selling privileges and suspending
27 accounts. Users may be suspended for repeat offenses, for more serious violations,
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1 or under any other appropriate circumstances where indicia of user fraud or
2 otherwise suspicious activity are present.

3 **eBay's Picture Policy**

4 10. eBay's Picture policy requires sellers to include at least one image in
5 their listings, to ensure that potential buyers are able to examine and evaluate
6 materials offered for sale, and thereby make informed purchasing decisions. eBay's
7 automated systems will reject any listing that does not contain at least one image.
8 eBay does not create a separate market for those images disassociated from the
9 merchandise they depict.

10 11. Attached hereto as Exhibit D is a true and correct copy of eBay's
11 *Picture policy*, bearing Bates numbers EBAY0000072-73, which is available at
12 <http://pages.ebay.com/help/policies/picture.html>.

13 12. While eBay believes the inclusion of at least one image in for-sale
14 listings is crucial to the safety and effectiveness of its platform, eBay's *Images and*
15 *text policy* explicitly prohibits its users from using any images (including
16 photographs) they do not own or did not create themselves without authorization
17 from the owner of the image in question.

18 13. Attached hereto as Exhibit E is a true and correct copy of eBay's
19 *Images and text policy*, bearing Bates numbers EBAY0000053-54, which is
20 available at <http://pages.ebay.com/help/policies/image-text.html>.

21 **eBay's Automated Listing Process**

22 14. The process of creating a listing for the sale of an item on eBay is a
23 fully-automated one that is initiated by the seller. Each listing must contain certain
24 elements including: a title that makes clear what item is being offered for sale, a
25 description of the item, the item's price, shipping costs and shipping options,
26 payment information, and a return policy—as well as at least one image, as
27 discussed in paragraphs 10-11, above. eBay's website provides sellers with an
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1 online tool that helps sellers populate their listing with the information they choose
2 and with guidelines regarding how to create a listing.

3 15. Attached hereto as Exhibit F is a true and correct copy of a screenshot
4 of eBay's "Creating a listing" page, which is available at
5 http://pages.ebay.com/help/sell/listing_ov.html.

6 16. After a seller has finished creating a listing, but before the listing
7 becomes "live" on eBay's website, eBay's back-end technology automatically runs
8 the new listing through filters that are designed to identify certain categories of
9 items that are prohibited on eBay. For example, eBay's automated systems will
10 reject listings that expressly offer counterfeit merchandise. Certain other keywords
11 may result in a listing being placed in a queue for review by eBay personnel.

12 17. Unless the automated filter places a listing in a queue for review,
13 listings created by sellers are not reviewed by eBay personnel before they become
14 live on eBay's website. Thereafter, live listings are generally reviewed by eBay
15 personnel only if they are reported by an eBay user (for instance, through eBay's
16 Verified Rights Owner—"VeRO"—Program, which enables users to report
17 instances of alleged infringement of intellectual property rights on eBay's website).

18 **eBay's Repeat Infringer Policy**

19 18. By October 2000, eBay had adopted and implemented a policy that
20 provides for the termination in appropriate circumstances of eBay account holders
21 who are repeat infringers. eBay's repeat infringer policy has been in place
22 continuously at least since then.

23 19. eBay makes clear to its users that, under its repeat infringer policy,
24 their accounts may be suspended for repeated acts of copyright infringement,
25 including re-listing an item that was taken down for infringement. eBay informs its
26 account holders of its repeat infringer policy on its website, including at pages titled
27 "Suspended accounts" and "Why did eBay remove my listing?"
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1 20. Attached hereto as Exhibit G is a true and correct copy of eBay's
2 "Suspended accounts" page, bearing Bates numbers EBAY0000029-30, which is
3 available at <http://pages.ebay.com/help/account/suspended-accounts.html>.

4 21. Attached hereto as Exhibit H is a true and correct copy of eBay's
5 "Why did eBay remove my listing?" page, bearing Bates numbers EBAY0000035-
6 36, which is available at [http://pages.ebay.com/help/sell/questions/listing-](http://pages.ebay.com/help/sell/questions/listing-ended.html)
7 [ended.html](http://pages.ebay.com/help/sell/questions/listing-ended.html).

8 22. eBay recognizes that suspension remedies can have serious
9 consequences for the affected user, particularly for those who depend upon eBay as
10 their primary source of income, but eBay does not shy away from invoking
11 suspensions where circumstances warrant. eBay will not tolerate willful
12 counterfeiters no matter what their level of dependence on eBay; conversely,
13 usually responsible sellers of good reputation can inadvertently run afoul of eBay
14 policies. eBay attempts to evaluate each situation on its merits, with the ultimate
15 objective of promoting lawful commerce on its site conducted by reputable users.

16 23. eBay has implemented several forms of suspension. These include, as
17 one of the less severe sanctions, restrictions on the user's account, under which the
18 user is limited as to what that user can do on the site. An account restriction can
19 include a limitation on the number of items that a seller is allowed to have listed on
20 eBay at a given time or the monetary value of the merchandise that a seller may
21 offer at a particular time.

22 24. More severe actions include outright suspensions from eBay of
23 varying length. For example, a user may be suspended on a short-term basis until
24 the user provides eBay with requested information, such as a credit card, phone
25 number, or certain documentation. Users also may be indefinitely suspended.
26 Indefinite suspensions are, as their name indicates, generally permanent, and users
27 subject to indefinite suspensions remain bound by the terms and conditions of
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1 eBay's User Agreement.

2 25. In considering suspension, eBay also examines the severity of the
3 user's specific violation and the user's history of past violations. eBay has
4 suspended from its site tens of thousands of users who repeatedly list infringing
5 items or otherwise violate eBay policies.

6 26. eBay also employs a variety of measures in an effort to keep
7 previously suspended users from returning to the site. Most notably, eBay has
8 developed sophisticated tools that enable it to profile and detect patterns of
9 fraudulent activity, including tools that allow eBay to identify previously suspended
10 users and prevent them from re-registering even with different personally-
11 identifying information.

12 **eBay's Designated Copyright Agent**

13 27. I am currently eBay's designated copyright agent. My registration as
14 eBay's designated copyright agent was submitted to the United States Copyright
15 Office in June, 2014, but the Copyright Office has apparently not yet uploaded the
16 form to its website at www.copyright.gov. Prior to that time, and during the
17 months that are relevant to this action, August through December 2013, eBay's
18 designated copyright agent was Amber Leavitt. During that time, Ms. Leavitt's
19 address, phone number, and electronic mail address, were available to the public via
20 eBay's website and were provided to the United States Copyright Office.

21 28. Attached hereto as Exhibit I is a true and correct copy of eBay's
22 "VeRO: Reporting an Infringement" page, bearing Bates number EBAY0003101,
23 which is available at <http://pages.ebay.com/vero/notice.html>.

24 29. Attached hereto as Exhibit J is a true and correct copy of the Amended
25 Interim Designation of Agent to Receive Notification of Claimed Infringement,
26 bearing Bates numbers EBAY0000001-05, which was marked received by the
27 United States Copyright Office in 2012 and shows Ms. Leavitt as eBay's
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1 designated copyright agent.

2 **eBay Does Not Receive A Financial Benefit from Allegedly Infringing Activity**

3 30. When eBay takes down a listing (for instance, in response to a notice
4 of claimed infringement), eBay refunds all relevant fees to the seller whose listing
5 was taken down.

6 31. Attached hereto as Exhibit K is a true and correct copy of Exhibit B to
7 eBay's Supplemental Responses to Plaintiff's First Set of Interrogatories, dated
8 July 1, 2014, bearing Bates numbers EBAY0002026-34. Exhibit K is a chart
9 produced by eBay in connection with this action that reflects fees collected from
10 and, in certain cases, refunded to sellers in connection with the listings at issue in
11 this lawsuit. The information in Exhibit K was drawn from eBay's data warehouse,
12 where information from and about listings is regularly stored in the ordinary course
13 of business.

14 32. Although eBay refunded fees for all of the reported listings that were
15 taken down in responses to Plaintiff's NOCIs, there are several listings that,
16 collectively, reflect less than four dollars (\$4) in revenue to eBay. *See* Exhibit K.
17 One of these listings (number 180596330604) is a type of listing known as a "Good
18 'Til Cancelled" listing, which was automatically re-listed when the item did not
19 sell, and for which fees were refunded only for the final re-listing, more
20 specifically, the instance that the listing was taken down by eBay. That listing was
21 active on the site for more than three years until it was taken down.

22 33. One of these listings (number 161063672817) is a listing that ended
23 naturally with a high bidder. The fees charged to the seller by eBay are a
24 percentage of the sold price and are rounded up to the nearest penny when charged
25 to the seller, but in this table, they are shown as unrounded figures. For example,
26 for listing number 161063672817, the seller was charged 74 cents when this listing
27 ended naturally; the column labeled FEE_REV_USD, shows the fee as -0.733. In
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1 the event that the fees were refunded, the net revenue to eBay would be noted in the
2 column labeled NET_REV_USD. This figure does not account for rounding issues
3 between the fees actually charged to the seller (the rounded figure) and the number
4 shown in the column labeled FEE_REV_USD (the unrounded figure). For example,
5 for listing number 161063672817, the fees were refunded, thus the net revenue to
6 eBay was zero, though the column labeled NET_REV_USD shows 0.007, which is
7 the difference between the rounded 74 cent fee charged and the unrounded number
8 in column FEE_REV_USD [0.733]. Similarly, currency conversion into USD
9 from the currency utilized for the transaction can result in rounding of fees charged,
10 though the numbers included in this table show the unrounded figures, all in USD.
11 One such example is listing number 310732455430.

12 **eBay Has No License With Worthpoint**

13 34. eBay has no license agreement with Worthpoint or any third party that
14 authorizes Worthpoint to copy or display images that appear in eBay's listings.
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4 I declare under penalty of perjury under the laws of the United States that the
5 foregoing is true and correct.
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7 Executed on September 4, 2014, in Chicago, Illinois.

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10 CARA BALDWIN
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